IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 5257 OF 2007

Khashaba Bajirao Thorat & anr..... Petitioner

versus

Kum.Amol Valmik Nimbalkar & ors..... Respondent.

Shri V.B.Nighot for the petitioner.

CORAM; A.P. DESHPANDE, J.
DATED; 18TH JULY, 2007

P.C.;

1. The present petitioners are the purchasers of the suit property from the respondent no.5 Valmik Nimbalkar. The property appears to be ancestral property which has come in possession of Respondent no.5 Valmik. The present respondent nos. 1 to 3 are the children whereas respondent no.4 is the wife of Valmik. The respondent nos.1 to 4 instituted a suit in the Court of C.J.J.D. for declaration, partition and perpetual injunction. The respondent no.5 so also the present petitioners are original defendants in the suit filed by respondent nos. 1 to 4. The respondent nos. 1 to 4 filed an application for temporary injunction seeking to restrain the present petitioners from interfering with the possession and peaceful enjoyment of the suit property by the plaintiff. The trial court on primafacie consideration of the rival

contentions has granted temporary injunction after holding that the plaintiffs have made out a primafacie good case and after further recording a finding that balance of convenience so also the aspect of irreparable loss weighs in favour of the plaintiff. Aggrieved by the order passed by the trial Court the present petitioners filed Misc. Civil Appeal before the District Court. The District Judge by its order dated 13-6-2007 concurring with the view taken by the trial court, has dismissed the Misc. Civil Appeal and aggrieved thereby he present writ petition has been filed.

2. Perused the order passed by the First Appellate Court. The same goes to take a possible view of the matter which is not required to be interfered with in exercise of writ jurisdiction. It is also brought to my notice that prior to the filing of the instant suit by respondent nos. 1 to 4, the petitioner had filed a suit claiming injunction against the respondent nos.4 and 5 and brother of respondent no.5, as the petitioners were apprehending their dispossession. Though an ex-parte ad-interim temporary injunction was granted the relief as against the present respondent no.4 came to be vacated, on account of non-compliance of provisions of Order 39 Rule 3 by the present petitioners.

3. The learned counsel for the petitioner at this stage submits that as the subject matter of both the suits is the same, it would be in furtherance of cause of justice, if both the suits are simultaneously tried by the same court. Thus the learned counsel for the petitioner seeks liberty to move the District Court by making an appropriate application for transfer of one of the suit so that both the suits can be tried by the same court. Liberty is granted. The petitioner is granted liberty to move an application under section 24 or CPC before the District Court so that both the suits can be tried together.

4. It is next submitted by the learned counsel that during pendency of the appeal, the sugar cane crop was harvested from the suit land and was sold to the karkhana. By the impugned order the plaintiffs are permitted to withdraw the payment of the sugar cane crops as primafacie, it has been found that the plaintiffs are in possession. The grievance that is made is that the Karkhana has withheld the payment to the petitioner in regard to the sugar cane crops supplied to the karkhana from other land owned by the petitioner under an assumption that the order passed by the First Appellate Court restrains the karkhana from making payment of sugar cane crop from other land

of the petitioner which is not in dispute. In this regard, I permit the petitioners to move appropriate application before the trial court and seek necessary orders. Having regard to the nature of controversy I deem it appropriate to seek an expeditious disposal of the suit. I hope and trust that the trial court shall proceed to decide the suit as expeditiously as possible, preferably within a period of six months from today. With the above observations, the writ petition is summarily dismissed.

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